



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 3, 1999

Honorable Kevin Phillips
Mayor, City of Caliente
P.O. Box 158
Caliente, NV 89008

SUBJECT: RESPONSE TO QUESTIONS FROM THE MAYOR OF CALIENTE DURING THE NOVEMBER 9, 1999, U.S. NUCLEAR REGULATORY COMMISSION PUBLIC MEETING ON ITS REVIEW OF THE U.S. DEPARTMENT OF ENERGY "DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR A GEOLOGIC REPOSITORY FOR THE DISPOSAL OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE AT YUCCA MOUNTAIN, NYE COUNTY, NEVADA"

Dear Mayor Phillips:

We again express our appreciation to you for hosting our November 9 Public Meeting in Caliente, Nevada. We also appreciate your taking time from your schedule to attend the meeting and provide us your views. The U.S. Nuclear Regulatory Commission (NRC) staff remains committed to enhancing its relationship with local opinion leaders and concerned citizens, and wants to be informed of local concerns in carrying out our responsibilities, including our responsibility to comment on the U.S. Department of Energy's (DOE) Draft Environmental Impact Statement (DEIS). During your opening remarks at the meeting, you asked six questions about NRC's responsibilities regarding compliance with the National Environmental Policy Act (NEPA) for the proposed repository at Yucca Mountain. Our responses to your questions appear below. If you wish any further information, please let me or my staff know.

QUESTION 1: Are (or will) NRC staff working closely with DOE staff to develop a final EIS [Environmental Impact Statement] which satisfies the needs of NRC?

RESPONSE: NRC is required by law to comment on the DEIS. NRC staff is performing an extensive review of the DEIS, and will provide comments as part of the public comment period. We met with DOE in October, and we will be available to meet again, should DOE wish to discuss our comments. However, since NRC is not designated as a cooperating agency (i.e., an agency designated under Council on Environmental Quality regulations to provide substantial assistance to the lead agency) for DOE's DEIS, we cannot actively participate in the EIS development process.

QUESTION 2: What is the best way for residents of Lincoln County and the City of Caliente to inform NRC of local concerns about the adequacy of the DOE DEIS for Yucca Mountain?

RESPONSE: NRC has been attending most of DOE's public meetings to listen to what the public has to say, because we are especially interested in the ideas and comments of people affected by DOE's proposed actions. We attended the DOE meetings in Caliente, and we

believe we understand the concerns expressed in those meetings. If they wish, Caliente and Lincoln County residents may provide NRC with an information copy of any comments they send to DOE. In addition, DOE's final EIS (FEIS) is expected to include discussion of the comments DOE has received, and NRC will be reviewing the FEIS.

QUESTION 3: How will NRC use the EIS it adopts for the Yucca Mountain Project?

RESPONSE: NRC will use the EIS it adopts, in addition to the material included in a license application, to support a decision on whether to authorize DOE's construction of a repository. NRC would also use the EIS to support a later decision on whether to issue DOE a license for a geologic repository. The Nuclear Waste Policy Act (NWP) requires NRC to adopt DOE's FEIS to the extent practicable.

QUESTION 4: What is the relationship, if any, between the information contained within the FEIS for Yucca Mountain and the NRC licensing process for the project?

RESPONSE: The NWP provides that adoption of the FEIS will satisfy NRC's NEPA responsibilities and that no further consideration of environmental issues *per se* by NRC will be required. NRC's licensing process will include a hearing which will focus on health and safety issues. In addition, the impacts of the proposed repository on the surrounding populations, insofar as they bear on public health and safety, will certainly be integral to any licensing decision by NRC. In the hearing, a party may contend that it is not practicable for NRC to adopt the FEIS and this issue would need to be resolved by the presiding officer. However, issues that are resolved in the FEIS would not be reopened in NRC's licensing proceeding. It should be noted that the NRC licensing process for a repository will also include a health and safety review under the Atomic Energy Act. DOE must provide a separate safety analysis report which the Commission will evaluate.

QUESTION 5: If the NRC determines that the DOE FEIS is not adequate to enable the Commission to adopt the document, will NRC seek to have DOE delay release of the FEIS and/or prepare a supplement to the document?

RESPONSE: DOE's release of the FEIS will precede NRC's consideration of whether it is practicable to adopt the FEIS, which will occur during NRC's licensing proceeding. NRC's regulations require that DOE supplement its FEIS so as to take into account the environmental impacts of any substantial changes in its proposed actions or any significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

QUESTION 6: Will NRC wait until all legal challenges of the DOE's FEIS for Yucca Mountain have been resolved before the Commission considers adoption of the FEIS?

RESPONSE: No. The time-line for a Commission decision on DOE's license application is independent of the time-line for a judicial decision on a legal challenge to DOE's FEIS. However, it seems likely that a court would reach its decision within the three years allotted by the NWP for NRC's licensing proceeding. NRC's licensing proceeding is not likely to begin

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until after the 180 day deadline (from DOE's site recommendation) for filing a legal challenge to the FEIS. Should the Commission adopt the FEIS, and a legal challenge of that EIS is subsequently upheld, the Commission will need to consider what action to take.

I trust that this letter answers your questions. If you have any additional questions, please contact me at (301) 415-6537 or cbr@nrc.gov.

Sincerely,

[Original signed by:]

C. William Reamer, Chief
High-Level Waste and
Performance Assessment Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

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I trust that this letter answers your questions. If you have any additional questions, please contact me at (301) 415-6537 or cbr@nrc.gov.

Sincerely,

C. William Reamer, Chief
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